

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

MICHAEL A. HERNANDEZ,

Petitioner,

V.

STATE OF NEBRASKA, ROBERT P. HOUSTON, Director, FRED BRITTEN, Warden, TECUMSEH STATE CORRECTIONAL INSTITUTE, and ATTORNEY GENERAL OF THE STATE OF NEBRASKA,

Respondents.

CASE NO. 4:13CV3004

MEMORANDUM AND ORDER

This matter is before the court on Petitioner’s Motion for an Evidentiary Hearing and Motion to Appoint Counsel. (Filing Nos. [21](#) and [22](#).) The court explained to Petitioner in a previous Memorandum and Order that “there is neither a constitutional nor statutory right to counsel in habeas proceedings; instead, [appointment of counsel] is committed to the discretion of the trial court.” [McCall v. Benson, 114 F.3d 754, 756 \(8th Cir. 1997\)](#), (citations omitted). As a general rule, counsel will not be appointed unless the case is unusually complex or the petitioner’s ability to investigate and articulate the claims is unusually impaired or an evidentiary hearing is required. See, e.g., [Morris v. Dormire, 217 F.3d 556, 558-59 \(8th Cir. 2000\)](#), *cert. denied*, 531 U.S. 984 (2000); [Hoggard v. Purkett, 29 F.3d 469, 471 \(8th Cir. 1994\)](#), (citations omitted); see also Rule 8(c) of the *Rules Governing Section 2254 Cases in the United States District Courts* (requiring appointment of counsel if an evidentiary hearing is warranted). Upon review of the pleadings and Petitioner’s Motion, there is no need for the appointment of counsel or an evidentiary hearing at this time.

IT IS THEREFORE ORDERED that: Petitioner's Motion for an Evidentiary Hearing and Motion to Appoint Counsel (Filing Nos. [21](#) and [22](#)) are denied without prejudice to reassertion.

DATED this 18th day of April, 2013.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge

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